

THE COUNTY BULLETIN
and Uniform Compliance Guidelines

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October 1998

REMINDER OF ORDER OF BUSINESS

October

- 1 Last date for County Board of Tax Adjustment [except Marion County and in a county containing a second class city (November 1)] to complete its duties. (IC 6-1.1-17-9(a))
 - 7, 8, 9 County Auditor's Fall Conference - Indianapolis, Indiana
 - 12 Columbus Day - Legal Holiday (IC 1-1-9-1)
 - 15 Last day to make pension report and payment for third quarter by counties participating in Public Employee's Retirement Fund.
 - 20 Last day to report and make payment of State Income Tax withheld in September to Indiana Department of Revenue.
 - 31 Last day to file quarterly unemployment compensation report with the Indiana Employment Security Division.
- Last day to report and make payment of balance of Federal Income Tax withheld in the third quarter to Internal Revenue Service.
- Last day Annual Tax Sale can be held. [IC 6-1.1-24-2(a)(8)]

November

- 1 Issue tax sale certificates to County for properties offered in tax sale for two consecutive years and unsold at the 1998 Tax Sale. (IC 6-1.1-24-6)
- Last date for County Board of Tax Adjustment in Marion County and in a county containing a second class city to complete its duties. (IC 6-1.1-17-9(a))

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REMINDER OF ORDER OF BUSINESS
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November

- 2 Last day for county auditor to certify to the division of state court administration the amount, if any, the county will be providing to the judge's salary during the ensuing calendar year. (IC 33-13-12-7.1(b))
- 10 Last day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections. (IC 6-1.1-37-10)
- 11 Veterans' Day - Legal Holiday. (IC 1-1-9-1)
- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 26 Thanksgiving Day - Legal Holiday. (IC 1-1-9-1)

December

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)

At regular meeting of Board of County Commissioners consideration may be given to appointments of certain personnel and to bids and awards for highway supplies, materials and equipment for 1999.

Newly Elected County Auditors Training - Indianapolis, Indiana
- 3 Newly Elected County Treasurers Training - Indianapolis, Indiana
- 8 Newly Elected County Clerks of the Circuit Court Training - Indianapolis, Indiana
- 10 Newly Elected County Recorders Training - Indianapolis, Indiana
- 20 Last day to report and make payment of State Income Tax withheld in November to Indiana Department of Revenue.

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REMINDER OF ORDER OF BUSINESS
(Continued)

December

25 MERRY CHRISTMAS!! Legal Holiday. (IC 1-1-9-1)

31 Review year-end duties.

Post and close all records completely and promptly.

The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office, if field examiners or a successor Treasurer are not available to verify the cash count.

Cash Change Funds issued to any county officer whose term expires must be returned to the County General Fund.

**QUESTIONS AND ANSWERS FROM THE CLERK OF THE CIRCUIT COURTS
ANNUAL CONFERENCE**

Question #1: Has there been established a foreign support registry book? We have an order from another state establishing a support order but it is not a URESA. Does it need a cause number for reference?

Answer #1: No, there is no foreign support registry book. At this time there is no consensus way to file this type of order. No filing fee should be collected and no cause number should be assigned.

Question #2: Our county is considering computerizing our bookkeeping receipts and disbursements record keeping. Are there any certain requirements that we must do, if so what? Do you recommend any certain program or company that we contact?

Answer #2: The State Board of Accounts does not certify computer systems and cannot recommend a certain program or vendor. This is your decision after observing the proposed system and discussion with other clerks using the system. Once you have made a decision on the system you wish to install then you will need to send us the reports so we may approve the reports for use.

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**QUESTIONS AND ANSWERS FROM THE CLERK OF THE CIRCUIT COURTS
ANNUAL CONFERENCE - (Continued)**

Question #3: Do we stop collecting the \$5 Special Death Benefit Fee as of December 31, 1998?

Answer #3: Yes, IC 35-33-8-3.2 states the collection of this fee expires on December 31, 1998.

Question #4: Can the BMV suspend someone's drivers license for failing to appear on fishing without a license?

Answer #4: According to Susan Frye of the BMV, they can suspend your drivers license for any failure to appear.

Question #5: Is there or can there be a fund or an account for fee drawer shortages? Can the office have a petty cash fund for this? Not everyone is dishonest but we are all human. Can each person who collects money have there own drawer?

Answer #5: Yes, everyone who collects money could have their own drawer. We would recommend this for control purposes if possible. At that point each person is responsible for balancing their cash drawer. No fund, account, or petty cash could be established to cover shortages in the cash drawer. The individual or elected official would be responsible for the cash shortages.

Question #6: IC 35-33-8-3.2 states fees are to be collected. Does this mean attorney fees?

Answer #6: Attorney fees are not specifically mentioned. This statute does state the fees are to be collected if ordered by the court. Therefore, you should not withhold attorney fees from the bond unless specifically ordered by the court.

Question #7: I understand that there is an Attorney General opinion that allows a chief deputy for each court in the county. First is this correct and second how do we get our county councils to follow this?

Answer #7: IC 36-2-16-9 states that if a county has a superior or county court or two (2) or more courthouses in which branches of county offices are maintained the deputies in charge of the various courts or branches rank as, and shall be compensated as, first or chief deputies. We would recommend you show this code to the county council and the attorney for the county council. At that point it is their decision as to the setting of the compensation.

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QUESTIONS AND ANSWERS FROM THE CLERK OF THE CIRCUIT COURTS
ANNUAL CONFERENCE - (Continued)

Question #8: Is it mandatory to write infractions in a fee book since everything in on the CCS, that includes infraction, disposition, payment, receipt, etc?

Answer #8: Yes, IC 34-2-16-1 and IC 33-17-2-9 require this. We would suggest legislation to repeal this requirement since this information is on the CCS.

Question #9: Is there an Indiana Law to mandate counties to accept the ISETS system; and , if not, does the state have the power to hold federal incentives if there is no law?

Answer #9: There is no Indiana Law that requires you to accept the ISETS system but there is a federal mandate requiring this. Whether the state has power to withhold incentive payments is a legal question that we cannot answer.

Question #10: What statute separates church from state?

Answer #10: U.S. Constitution

Question #11: Our county has awarded the printing contract for the county to one certain vendor for our printing needs. Do we have to buy all our printing supplies from this vendor or can we go elsewhere if we find a cheaper price for our printing needs?

Answer #11: You should be abiding by the contract as entered into by the county.

Question #12: Have any clerks been notified that their county commissioners have adopted an ordinance to require a purchasing agent to approve any claims submitted for payment by the clerk of over \$1,000?

Answer #12: Effective July 1, 1998, a new purchasing law went into effect. One of the provisions is the appointing of purchasing agents and adopting of a local purchasing policy. Therefore this is a possibility. Also each county may have different rules. The new purchasing law is IC 5-22.

Question #13: Why are we not allowed to charge for marrying couples, yet city clerks, city judges and circuit judges can?

Answer #13: There is an attorney general opinion that prohibits clerks from charging for this. Also, clerks are empowered to perform marriages by virtue of being elected. Indiana Code says that a clerk's salary is for all the duties of the office including the ability to perform marriages.

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**QUESTIONS AND ANSWERS FROM THE CLERK OF THE CIRCUIT COURTS
ANNUAL CONFERENCE - (Continued)**

Question #14: What is the opinion of the State Board of Accounts regarding ISETS undistributed funds that are held over and not distributed due to various programming issues? Wouldn't we (clerks) be subject to owing interest as Marion County did a couple of years ago? Are we not required to keep from having undistributed funds in our support account?

Answer #14: The State Board of Accounts would not take an audit exception to undistributed funds. Page 5-37 of the clerk's manual states, "If the clerk has a policy of delivering or mailing support checks on a specified day of the week or withholds holding them until sufficient time has elapsed to allow the clearance of a personal check tendered for payment, all such checks should be held in a safe place until the scheduled day." As a general rule, you should disburse as quickly as possible and no interest would be paid unless ordered by the court based on a settlement of a lawsuit.

**QUESTIONS AND ANSWERS FROM THE COUNTY TREASURERS ANNUAL
CONFERENCE**

Question #1: Persons want to pay next year's taxes in advance (at the end of year 1998 for 1999) and want a receipt for their accountant. What is State Board of Accounts recommendation for same? If accepted on date of payment and posted it goes into Surplus (excess) and can't be used till after settlement. Then it is delinquent with a penalty.

Answer #1: Page 5-1 of the County Treasurer's Manual explains the proper procedure for the advance payment of taxes.

Question #2: Is the Innkeepers Tax considered public information? Is our office allowed to release exact collection amounts from specific inns to media personnel?

Answer #2: Based upon research by the Public Records Commission and this office, there is no statute that says these are confidential records. Therefore, unless your county attorney can specifically find a statute stating these are confidential it would appear they are available for inspection.

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**QUESTIONS AND ANSWERS FROM THE COUNTY TREASURERS ANNUAL
CONFERENCE - (Continued)**

Question #3: When sending demand notices, we do not mail those that have filed for bankruptcy. Should we consider these current delinquents or continue and certify them? If we would certify them, we would not attempt collection until the bankruptcy is resolved.

Answer #3: You should not attempt to collect any delinquencies in a bankruptcy case including certifying.

Question #4: What if treasurer never cleared a mobile moved out of county. Are we clearing home or lot?

Answer #4: Personal property taxes are levied against the mobile home. If the mobile home has been removed from the county, the delinquency should be certified to the Clerk of the Circuit Court.

Question #5: What can be done if dog tax has not been paid for 1993 certification?

Answer #5: See page 5-3 of the County Treasurer's Manual. IC 15-5-9-2 says that dog taxes, when certified by the assessor, are to be collected as property taxes.

EXCESS TAX COLLECTED - SURPLUS TAX FUND - UNCLAIMED FUNDS

Any payments in excess of the taxes and special assessments actually due, as shown on the tax duplicate or special assessment records, shall constitute a special fund to be known as a "surplus tax fund." Amounts placed in such fund shall first be applied to delinquent taxes in the manner set forth in IC 6-1.1-23-5(b). Any amounts remaining shall be disbursed to the party entitled thereto, on the warrant of the county auditor after approval of such claim by the county auditor and the treasurer.

Not less frequently than at the time of each semiannual settlement, the treasurer shall prepare a schedule on County Form 65SFT, Surplus Tax Fund Ledger, of all excess payments received showing the name on the tax duplicate, the amount of the excess paid, and the taxing district, and deliver the schedule to the county auditor. Within fifteen (15) days after receiving the schedule, the county auditor shall review the schedule, and if the county auditor concurs with the schedule, the county auditor shall notify the county treasurer that the notice may be sent.

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EXCESS TAX COLLECTED - SURPLUS TAX FUND - UNCLAIMED FUNDS -
(Continued)

The county auditor shall preserve the schedule and, if a refund is made thereafter, shall further note thereon the date and amount of each item refunded. In addition, when money is transferred from the surplus tax fund to the county general fund, the county auditor shall note the date and amount of the transfer on the schedule.

If an excess payment is not claimed within the three (3) year period after November 10 of the year in which it was paid and the county treasurer has given the written notice, the county auditor shall transfer such sum into the general fund of the county and it shall not thereafter be refunded. (IC 6-1.1-26-6) This type of "excess" collection is not to be confused with tax sale surplus items.

This subsection applies only if the amount of an excess payment is more than five dollars (\$5) and exceeds the amount applied to property taxes that are delinquent at the time that the excess payment is transferred to the surplus tax fund. Not later than forty-five (45) days after receiving the notification from the county auditor, the county treasurer shall give the taxpayer who made the excess payment written notice that the taxpayer may be entitled to a refund. The notice shall be mailed to the last known address of the taxpayer as listed on the tax duplicate of the most current record of the county treasurer. The notice must contain at least the following information:

- (1) A statement that the taxpayer may be entitled to a refund because the taxpayer made an excess payment.
- (2) The amount of the refund.
- (3) Instructions on how to claim the refund.
- (4) The date before which the refund must be claimed.
- (5) An explanation that the amount of the refund will be reduced by any amount applied to property taxes that are delinquent.

RESPONSIBILITY FOR ESTABLISHING VACATION, SICK LEAVE, PAID
HOLIDAYS, AND OTHER SIMILAR BENEFITS

Attorney General Opinion No. 88-7, states that the number of vacation days that employees of the county shall receive with pay, sick leave, paid holidays, and other similar benefits may be granted by ordinance of the board of county commissioners of the county pursuant to Indiana Code Section 5-10-6-1(b), unless a specific statute for specific employees provides otherwise.

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RESPONSIBILITY FOR ESTABLISHING VACATION, SICK LEAVE, PAID HOLIDAYS, AND OTHER SIMILAR BENEFITS - (Continued)

It is imperative that the county adopt a policy regarding leave rules and other benefits. The State Board of Accounts will be auditing the policy to see that the employees of the county are following the adopted policy.

CLERK OF THE CIRCUIT COURT - JUDGMENTS COLLECTED ON OVERWEIGHT VEHICLES

The Clerk of the Circuit Court shall receipt all overweight infraction judgments separately on the Clerks Official Receipt and post to a separate column labeled "Overweight Vehicles" in the Clerks Cash Book of Receipts and Disbursements. The Clerk of the Circuit Court shall then remit such collections separately to the County Auditor on a monthly basis on the Monthly Report - Clerk of the Circuit Court (Form 46CR).

The County Auditor shall quietus the collections reported by the Clerk of the Circuit Court to a separate fund entitled "Overweight Vehicles." Amounts quietused to this fund shall then be remitted monthly to the Auditor of State designated as Overweight Vehicle Fines.

DELINQUENT DOG TAX

Before July 1 each year, the township assessor shall turn over to the township trustee all the records kept by the assessor relating to the collecting and payment of dog taxes and kennel license fees, and a copy of all receipts given by the assessor to persons having paid dog taxes and all tags left in the assessor's possession. The assessor shall assess against each person who failed to pay to the assessor the amount of any license fee owed by the person, and the amount of the license fees shall be placed upon the tax duplicate by the county auditor and collected as taxes are collected (IC 15-5-9-2).

REGISTRATION OF BAIL AGENT'S AND RECOVERY AGENT'S LICENSES

A bail agent may not become a surety on an undertaking unless the bail agent has registered the bail agent's license in the office of the sheriff and with the clerk of the circuit court in the county in which the bail agent resides. The bail agent may then become a surety in any other county upon filing a copy of the bail agent's license in the office of the sheriff and with the clerk of the circuit court in the other county. A surety bail agent must also file an

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REGISTRATION OF BAIL AGENT'S AND RECOVERY AGENT'S LICENSES -
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original qualifying power of attorney signed by the bail agent and attached to a specimen bail bond with the clerk of the circuit court and file a copy of the qualifying power of attorney with the office of the sheriff. The clerk of the circuit court and the sheriff shall not permit the registration of a bail agent unless the bail agent is currently licensed by the commissioner of the Department of Insurance.

A recovery agent may not perform the recovery agent's duties unless the recovery agent has registered the recovery agent's license within fifteen (15) days of issuance or any renewal in the office of the sheriff and with the clerk of the circuit court in the county where the recovery agent resides. The clerk of the circuit court and the sheriff may not permit a registration unless the recovery agent is properly licensed by the commissioner of the Department of Insurance (IC 27-10-3-17).

A fee for these registrations may be charged if a County enacts a home rule ordinance setting the fee in accordance with IC 36-1-3-1 et seq.

EXPIRATION OF BAIL BONDS WRITTEN AFTER AUGUST 31, 1985

Any undertaking written after August 31, 1985, shall expire thirty-six (36) months after it is posted for the release of a defendant from custody. This section does not apply to cases in which a bond has been declared to be forfeited, or in which the defendant is a fugitive from the jurisdiction after thirty-six (36) months.

APPROPRIATIONS - INSURANCE CLAIM PROCEEDS

IC 6-1.1-18-7 states "Notwithstanding the other provisions of this chapter, the appropriating body of a political subdivision may appropriate funds received from an insurance company if:

- (1) the funds are received as a result of damage to property of the political subdivision;
and
- (2) the funds are appropriated for the purpose of repairing or replacing the damage property.

However, this section applies only if the funds are in fact expended to repair or replace the property within the twelve (12) month period after they are received."

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APPROPRIATION REFUNDS

IC 6-1.1-18-9 states “Notwithstanding the other provisions of this chapter, the proper officer or officers of a political subdivision may:

- (1) make an appropriation with respect to a contract for the discovery of omitted property if the contract provides the payment for the services performed is to be made from taxes or penalties collected on the discovered property;
- (2) reappropriate money recovered from erroneous or excessive disbursements if the error and recovery are made within the current budget year; or
- (3) refund, without appropriation, money erroneously received.”

DORMANT FUND BALANCES TRANSFERS AUTHORIZED

IC 36-1-8-5 concerning transfers of unused and unencumbered funds states in part (a) “This section applies to all funds raised by a general or special tax levy on all the taxable property of a political subdivision.” (b) “Whenever the purposes of a tax levy have been fulfilled and an unused and unencumbered balance remains in the fund, the fiscal body of the political subdivision shall order the balance of that fund to be transferred as follows, unless a statute provides that it be transferred otherwise: ... (3) Funds of a township for redemption of poor relief obligations, to the poor relief fund of the township. (4) Funds of any other political subdivision, to the general fund of the political subdivision...” (c) “Whenever an unused and unencumbered balance remains in the civil township fund of a township and a current tax levy for the fund is not needed, the township fiscal body may order any part of the balance of that fund transferred to the debt service fund of the school corporation located in or partly in the township; but if more than one (1) school corporation is located in or partly in the township, then any sum transferred shall be transferred to the debt service fund of each of those school corporations in the same proportion that the part of the assessed valuation of the school corporation in the township bears to the total assessed valuation of the township.”

We are of the audit position the transfer may occur at any public meeting.

PETITION AND REMONSTRANCE PROCESS ON PROJECTS USING PROPERTY TAXES TO PAY DEBT SERVICE OR LEASE PAYMENTS

IC 6-1.1-20-3.1 states “...a petition requesting the application of a petition and remonstrance process may be filed by the lesser of: (A) two hundred fifty (250) owners of real property within the political subdivision; or (B) ten percent (10%) of the owners of real property within the political subdivision. Each petition must be verified under oath by a least one (1) qualified petitioner in a manner prescribed by the state board of accounts before petition is filed with the county auditor.”

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**PETITION AND REMONSTRANCE PROCESS ON PROJECTS USING PROPERTY
TAXES TO PAY DEBT SERVICE OR LEASE PAYMENTS - (Continued)**

This section is the first phase of this process. It is the period in which the political subdivision is finding out whether the taxpayers are interested in pursuing this further. This is not the full petition and remonstrance process as described in IC 6-1.1-20-3.2 and in which we have prescribed the forms. Section 3.1 does not require forms to be prescribed by this agency. It does state however, that the petition must be verified under oath. This agency believes that an affidavit is sufficient to meet this requirement. A notary public notarizing the petition is not required but may be done to meet this requirement. We believe this is more than what is required. We would also recommend using the prescribed petition form for phase 2 in this phase 1 process. Again, this is not required and the petitioners may use their own form.

ELECTION RESULTS

Reminder to the Clerks of the Circuit Court to send us the results of your county's election as soon as possible after November 3, 1998 so that we may be in contact with the successful candidates regarding the State Board of Accounts newly elected official training.